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 11 C&H SUGAR COMPANY, INC.
 and KYLE STRADLEIGH

12
UNITED STATES DISTRICT COURT
 13
NORTHERN DISTRICT OF CALIFORNIA

14
 15 JOAQUIN LEAL,

16 Plaintiff,

17 v.

18 C & H SUGAR COMPANY, INC.;
 19 KYLE STRADLEIGH (in his individual and
 professional capacities); and
 20 DOES 1 through 100 Inclusive,

21 Defendants.

22
CASE NO. 08-2030 JSW

23
E-Filing

24
**JOINT CASE MANAGEMENT
 STATEMENT AND PROPOSED ORDER**

25 Date: September 5, 2008
 Time: 1:30 p.m.
 Courtroom 2, 17th Floor

26 Pursuant to the Court's Order Setting the Initial Case Management Conference and ADR
 27 Deadlines, the Standing Order for All Judges of the Northern District of California, this Court's
 Local Rules, and the Federal Rules of Civil Procedures, Plaintiff Joaquin Leal and Defendants
 C&H Sugar Company, Inc. and Kyle Stradleigh jointly submit this case management statement
 and proposed order and request the Court to adopt it as its case management order in this case.

1 **1. Jurisdiction and Service**

2 The Court has subject matter jurisdiction based upon federal question, pursuant to 28
3 U.S.C. §1331, as the Complaint asserts a claim for violation of the federal Family Medical Leave
4 Act. On that basis, this case was removed from state court on April 18, 2008. Venue is proper in
5 the United States District Court for the Northern District of California, pursuant to 28 U.S.C.
6 §§1391(b) and 1441(b).

7 All parties to the litigation have been served and there are no additional parties to be
8 joined.

9 **2. Facts**

10 (a) Plaintiff's description of the events of this action:

11 Plaintiff was employed with Defendant C&H Sugar Company, Inc. (hereinafter C&H).
12 Plaintiff commenced employment with Defendant C&H in approximately June 2001 as a first-
13 class journeyman. In approximately September of 2006, Plaintiff's physician, Dr. Westbrook
14 diagnosed Plaintiff as suffering from depression and stress and directed Plaintiff to remain off of
15 work completely through October 16, 2006. Dr. Westbrook also found that the source of
16 Plaintiff's depression was work-related. Plaintiff, per Defendant C&H's policy, timely provided
17 Defendant C&H with the necessary medical paperwork.

18 Plaintiff was eventually contacted by a Defendant C&H medical department employee
19 who informed Plaintiff that he was required to meet with Defendant C&H's own physician on or
20 about October 6, 2006. On October 6, 2006, Plaintiff met with Defendant C&H's physician who
21 directed Plaintiff to return in about ten (10) days without instructing Plaintiff to return to work.

22 On or about October 12, 2006, Plaintiff again met with his psychologist, Dr. Westbrook
23 who confirmed his initial diagnosis of depression and directed Plaintiff to remain off work up
24 through October 31, 2006. Again, Dr. Westbrook found Plaintiff's depression to be job-related.
25 Per Defendant C&H's directive, Plaintiff again met with Defendant C&H's physician on October
26 17, 2006 who again told Plaintiff to return home and, at no time during the October 17, 2006
27 appointment, did Defendant C&H's physician direct Plaintiff that he was to return to work. On
28

1 or about October 26, 2006 Dr. Westbrook directed Plaintiff to remain off work up through
2 November 6, 2006.

3 Plaintiff continued to meet with his own physician and the company physician until
4 approximately November of 2006 when he was released to return to work. Plaintiff then
5 received a letter stating that Defendant C&H, or its employees and/or agents, would call Plaintiff
6 to inform him of his return date. Not having received any communication from his employer,
7 Plaintiff contacted his union representative. Ultimately, Plaintiff was instructed to obtain a letter
8 from his physician indicating that, in spite of his opinion to the contrary, his time off of work
9 was not work related.

10 Shortly thereafter, Plaintiff provided his employer with a letter from his physician stating
11 that Plaintiff was taken off of work for treatment of depression and stress. That letter also stated
12 that work stress factored in to Plaintiff's condition. The letter unequivocally stated that Plaintiff
13 was able to return to work. Plaintiff was informed that the letter was not considered by the
14 employer to be sufficient. Plaintiff then provided Defendant C&H with a second letter from Dr.
15 Westbrook. Dr. Westbrook again indicated that Plaintiff was being treated for a depressive
16 disorder and some personal stressors. The letter repeated that Plaintiff was fit to return to work.
17 The second letter again failed to satisfy Defendants C&H without explanation and refused to put
18 Plaintiff back to work. On or about January 22, 2007, Plaintiff was mailed a document entitled
19 "Benefits and Termination of Employment" which stated that the following was a review of
20 Plaintiff's benefits as a result of Plaintiff's termination of employment on January 1, 2007.

21 Plaintiff suffers from a serious health condition and disability which affects one or more
22 major life activities. He is qualified to perform the essential and material duties of his position as
23 a Lead Man Specialist for Defendant C&H, with or without reasonable accommodation.

24 Plaintiff further was eligible for benefits under the Family Medical Leave Act as he
25 worked for a covered employer (C&H), worked for a total of at least 12 months with C&H,
26 worked at least 1,250 hours for C&H over the previous 12 months, and worked at a location
27 where at least 50 employees are regularly employed by C&H. Plaintiff's termination was
28 actionable.

1 **(b) Defendant's description of the events of this action:**

2 This case arises out of Plaintiff's employment with C&H at its sugar refining plant in
3 Crockett. Plaintiff was absent from work for reported "depression" and related conditions
4 beginning in September 14, 2006 and continuing through his termination on January 18, 2007.
5 Plaintiff submitted disability reports from his primary physician but, despite C&H's requests, he
6 failed to submit the required Work Capabilities forms for the period when he was off work.
7 C&H policy provides that employees who are absent for four or more days must obtain a
8 physician's certification (C&H Disability Report) certifying whether they were disabled and
9 unable to work, and a Work Capabilities form identifying the nature of the employees' work
10 restrictions. These forms are used to evaluate whether employees are eligible for paid leave
11 under C&H's wage indemnity program. Under this program, employees who are unable to work
12 full time due to a disability receive 100% of their regular wages for the first three work days of
13 the disability and 80% of their wages thereafter up to maximum of one year. Because Plaintiff
14 did not submit the required forms identifying his work capabilities during the period when he
15 was off work, his absence was considered unexcused and he was terminated for job
16 abandonment. Dr. Westbrook's opinion as to whether Plaintiff was ultimately fit to return to
17 work had no bearing on C&H's decision to terminate Plaintiff's employment.

18 Plaintiff was off work for more than the 12 workweeks available to eligible employees
19 under the Family Medical Leave Act ("FMLA") and California Family Rights Act ("CFRA").
20 Defendants deny that Plaintiff was terminated for taking FMLA- or CFRA-qualifying leave or
21 because of his alleged medical issues.

22 **(c) The principal factual issues which the parties dispute:**

- 23 (1) Whether Plaintiff was disabled;
24 (2) Whether C&H terminated Plaintiff's employment because of his alleged
25 disability;
26 (3) Whether C&H and Stradleigh harassed Plaintiff because of his alleged
27 disability;

- 1 (4) Whether C&H and Stradleigh retaliated against Plaintiff for complaining
2 of a hostile work environment and discrimination;
- 3 (5) Whether Plaintiff suffered emotional and physical distress as a result of
4 Defendants' alleged conduct;
- 5 (6) The scope, nature and extent of Plaintiff's economic and other damages
6 resulting from the termination of his employment.

7 **3. The principal legal issues which the parties dispute:**

- 8 (a) **Whether C&H discriminated against Plaintiff because of his alleged
9 disability in violation of the Fair Employment and Housing Act, Cal. Gov't.
10 Code section 12900, et seq. (FEHA).** To state a *prima facie* case of disability
11 discrimination, the plaintiff must prove that: (1) he suffers from a disability as
12 defined under the FEHA; (2) he is otherwise qualified to do his job; and, (3) he
13 was subjected to an adverse employment action because of his disability.
14 (*Arteaga v. Brinks, Inc.*, 163 Cal.App.4th 327, 344-345 (2008)) Once a plaintiff
15 establishes a *prima facie* case, the burden shifts to the defendant to articulate a
16 legitimate reason for the actions it took. If the defendants offer such a reason, the
17 plaintiff must then establish that the legitimate reasons offered by the defendant
18 were not its true reasons, but were a pretext for discrimination. (*Arteaga, supra*,
19 163 Cal.App.4th at 343, quoting *Frank v. County of Los Angeles*, 149 Cal.App.4th
20 805, 822-824 (2007))
- 21 (b) **Whether C&H and Stradleigh harassed Plaintiff because of his alleged
22 disability in violation of the FEHA.** To make out a claim for disability
23 harassment, the events alleged must be related to the plaintiff's disability and so
24 severe and pervasive that they alter the conditions of plaintiff's work
25 environment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d
26 590, 610 (1989))
- 27 (c) **Whether C&H and Stradleigh retaliated against Plaintiff because of his
28 alleged disability in violation of the FEHA.** To prevail on this claim, plaintiff

1 must prove: (1) he engaged in a protected activity; (2) defendant subjected
2 plaintiff to an adverse employment action; and (3) a causal link exists between the
3 protected activity and the adverse employment action. (*Akers v. County of San*
4 *Diego*, 95 Cal.App.4th 1441 (2002)) If the plaintiff establishes a *prima facie* case
5 of retaliation, the burden shifts to the defendant to articulate a legitimate, non-
6 retaliation explanation for its actions. If the defendant does so, the burden then
7 shifts to the plaintiff to prove that the proffered explanation is pretext for unlawful
8 retaliation. (*California Fair Employment and Housing Commission v. Gemini*
9 *Aluminum Corporation*, 122 Cal.App.4th 1004 (2004); *Flait v. North American*
10 *Watch Corp.*, 3 Cal.App.4th 467 (1992))

11 (d) **Whether C&H and Stradleigh violated the Family Medical Leave Act, 29**
12 **U.S.C. § 2601, et seq. (FMLA) or California Family Rights Act, Cal. Gov't. §**
13 **12945.2 (CFRA).** Both the FMLA and CFRA provide leaves of absence for
14 eligible employees with “serious health conditions.” (29 U.S.C. § 2612(a)(1); Cal.
15 Gov’t Code § 12945.2(a)) Regardless of whether the employer designates the
16 leave as FMLA-qualifying, the maximum amount of leave allowed under these
17 statutes is 12 workweeks in a 12-month period. See *Ragsdale v. Wolverine World*
18 *Wide, Inc.* (2002) 535 US 81, 87 (invalidating the Department of Labor
19 regulations providing that if an employer does not designate the leave as FMLA
20 leave, the employee’s absence may not be subtracted from the 12-workweek leave
21 bank).

22 (e) **Whether individual defendant Stradleigh may be personally liable for FEHA**
23 **retaliation.** See *Jones v. The Lodge at Torrey Pines Partnership et. al.*, 42

24 Cal.4th 1158 (2008)(California Supreme Court holding that no individual liability
25 exists for a retaliation claim brought under the Fair Employment and Housing
26 Act);

(f) Whether an officer, director or managing agent of C&H acted with malice, oppression or fraud toward Plaintiff, entitling him to an award of punitive damages. (Cal. Civil Code § 3294(a))

4. Motions

There are no pending motions in this case. However, Defendants anticipate filing a motion for summary judgment.

5. Amendments of Pleadings

No amendments are anticipated at this time.

6. Evidence Preservation

The parties have complied with the evidence preservation requirements.

7. Disclosures

Defendants have made their initial disclosures as required by the Order Setting the Initial Case Management Conference. Plaintiff has not yet served his initial disclosures. Plaintiff will have served the initial disclosures prior to the Case Management Conference.

8. Discovery

Defendant C&H has served a document request and interrogatories on Plaintiff. The parties agree to the following discovery plan: To propound initial document request and interrogatories in the next 2-3 months; to notice and take percipient witness depositions within the next 1-7 months; to serve additional paper discovery and take any additional percipient witness depositions within the next 8-9 months; to conduct expert discovery as indicated below.

(a) Factual Discovery

Each side shall take, as necessary, up to 10 depositions, provided that, if more depositions are necessary, the party seeking any additional depositions would obtain leave of court, pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure. No party may serve more than 25 interrogatories on any other party, pursuant to the Rule 33(a) of the Federal Rules of Civil Procedures.

1 **(b) Expert Discovery**

2 The parties propose 100 days before trial as the deadline for designating any expert
3 witnesses and 70 days before trial for designating any rebuttal expert witnesses. The parties
4 propose 45 days before trial as the deadline for completing expert discovery.

5 **9. Class Actions**

6 Not applicable.

7 **10. Related Cases**

8 Not applicable.

9 **11. Relief**

10 Plaintiff's relief sought is as follows: Special and economic damages, including past and
11 future lost wages, lost employment benefits, past and future and other monetary relief, general
12 damages and non-economic damages according, punitive damages, prejudgment interest at the
13 prevailing legal rate, attorneys fees and expert witness fees pursuant to Government Code section
14 12965 (b), costs of suit herein incurred and for such other and further relief as the court deems
15 just and proper and as set forth in the Complaint.

16 Defendants contend that Plaintiff is not entitled to any recovery or relief.

17 **12. Settlement and ADR**

18 The parties have agreed to participate in court sponsored mediation on October 23, 2008.
19 On July 3, 2008, the parties filed a stipulation and Proposed order selecting that ADR process.

20 **13. Consent to Magistrate Judge for All Purposes**

21 At this time, the parties do not consent to assignment of the case to a United States
22 Magistrate Judge for trial.

23 **14. Other References**

24 Not applicable.

25 **15. Narrowing of the Issues**

26 Unknown at this time. The parties reserve the right to bring suitable recommendations to
27 narrow the issues to the Court's attention at a later time.

1 **16. Expedited Schedule**

2 Not applicable.

3 **17. Scheduling**

4 Dispositive motions: Hearing 60 days before trial

5 Discovery cutoff: 60 days before trial

6 Expert designation: 100 days before trial

7 Rebuttal expert designation: 70 days before trial

8 Expert discovery cutoff: 45 days before trial

9 Pretrial conference: 45 days before trial

10 Trial: October 2009

11 Trial: Five to seven days.

12 **18. Trial**

13 A jury trial has been demanded by Plaintiff's counsel.

14 **19. Disclosure of Non-party Interested Entities or Persons**

15 C&H has previously filed a Certification of Interested Entities and Persons. C&H hereby
16 reiterates the information in that certification: The following non-party entity has an interest in
17 the subject matter in controversy that could be substantially affected by the outcome of this
18 proceeding: American Sugar Refining, Inc. American Sugar Refining, Inc. is a parent company
19 of C&H, owning 100% of its stock.

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1 20. Other Matters

2 None.

3 4 DATED: August 28, 2008

5 MASTAGNI, HOLSTEDT, AMICK,
6 MILLER, JOHNSEN AND
7 UHRHAMMER8 9 By: 
10 11 Amanda Uhrhammer, Esq.
12 13 Attorneys for Plaintiff
14 15 JOAQUIN LEAL

16 17 DATED: August 28, 2008

18 19 EPSTEIN BECKER & GREEN, P.C.

20 21 By: _____
22 23 Steven R. Blackburn
24 25 Matthew A. Goodin
26 27 Andrew J. Sommer
28 29 Attorneys for Defendants
30 31 C&H SUGAR COMPANY, INC. and KYLE
32 33 STRADLEIGH

34 35 CASE MANAGEMENT ORDER

36 37 The Case Management Statement and Proposed Order is hereby adopted by the Court
38 39 as the Case Management Order for the case and the parties are ordered to comply with this
40 41 Order. In addition the Court orders:

42 43 DATED:

44 45 UNITED STATES DISTRICT JUDGE JEFFREY S. WHITE

20. Other Matters

None.

DATED:

**MASTAGNI, HOLSTEDT, AMICK,
MILLER, JOHNSEN AND
UHRHAMMER**

By: _____
Amanda Uhrhammer, Esq.
Attorneys for Plaintiff
JOAQUIN LEAL

DATED: August 28, 2008

EPSTEIN BECKER & GREEN, P.C.

By: /s/ Andrew J. Sommer
Steven R. Blackburn
Matthew A. Goodin
Andrew J. Sommer

Attorneys for Defendants
C&H SUGAR COMPANY, INC. and KYLE
STRADLEIGH

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

DATED:

UNITED STATES DISTRICT JUDGE JEFFREY S. WHITE